

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DANIEL L. WEIGEL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 187,447
<b>BOB BROWN'S AUTO SERVICE CENTER</b>	)	
Respondent	)	
AND	)	
	)	
<b>CINCINNATI INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant appealed the February 16, 1999 order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

This is a post-award request for additional medical treatment for an August 2, 1993 back injury. Claimant presented this request to the Division as a request for preliminary hearing benefits.

The Judge denied claimant's request. Claimant contends the Judge erred. He argues his back pain has progressively worsened as part of the natural progression of the August 1993 injury. Conversely, respondent and its insurance carrier argue that claimant has failed to prove (1) that he needs additional medical treatment and (2) that any treatment which he may need is related to the 1993 injury.

The only issues before the Board on this appeal are:

1. Does the Appeals Board have the jurisdiction to review a preliminary hearing finding of whether a worker's present disability and need for medical treatment is related to an accident that occurred at work or the natural progression of that accident?
2. If so, is claimant's present need for medical treatment directly related to the August 1993 back injury?

**FINDINGS OF FACT**

After reviewing the record compiled to date, the Board finds:

1. Mr. Weigel injured his back on August 2, 1993 while working for Bob Brown's Auto Service. By Order dated December 21, 1995, the Appeals Board awarded him benefits.
2. On January 12, 1999, Mr. Weigel filed an application for a preliminary hearing to request additional medical benefits.
3. At the February 15, 1999 preliminary hearing, Mr. Weigel testified that he desired medical treatment because his back had progressively worsened since his August 1993 injury and he was now experiencing the same back pain in the same location that he had in August 1993.
4. Although he has continued to work in automotive repair, he does not believe that he has sustained any new injury to his back. Instead, he relates his present symptoms to the natural progression of the 1993 back injury at Bob Brown's Auto Service.
5. Neither party presented medical evidence to either support or oppose those beliefs.

**CONCLUSIONS OF LAW**

1. The preliminary hearing order should be affirmed.
2. In construing statutes, the legislative intent is determined from considering the entire Act.<sup>1</sup>
3. The Kansas Supreme Court has stated that an important objective of workers compensation law is avoiding cumbersome procedures and technicalities of pleading so that a correct decision may be reached by the shortest and quickest possible route.<sup>2</sup>
4. Further, the Division is not bound by technical rules of procedure but should give the parties reasonable opportunity to be heard and to present evidence, insure an expeditious hearing, and act reasonably and without partiality.<sup>3</sup> The fair implication is any procedure that is appropriate and not prohibited by the Workers Compensation Act may be used.<sup>4</sup>

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<sup>1</sup> McGranahan v. McGough, 249 Kan. 328, 820 P.2d 403 (1991).

<sup>2</sup> Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988).

<sup>3</sup> K.S.A. 1998 Supp. 44-523(a); Pyeatt, *supra*.

<sup>4</sup> Bushey v. Plastic Fabricating Co., 213 Kan. 121, 515 P.2d 735 (1973); Drennon v. Braden Drilling Co., Inc., 207 Kan. 202, 483 P.2d 1022 (1971).

5. The Workers Compensation Act provides that preliminary hearings may be held after an award has been entered.<sup>5</sup> The Appeals Board has held on numerous occasions that the preliminary hearing procedure may be used after an award to request additional medical benefits.<sup>6</sup> After a post-award preliminary hearing, the parties may, if needed, request a full hearing and final order on the pending issues. That final order is then subject to Appeals Board review on the merits.

6. The issue of whether a worker's present disability and need for medical treatment is related to an accident that occurred at work is subject to Appeals Board review from a preliminary hearing order.<sup>7</sup>

7. Because of the time that has now elapsed since the August 1993 accident, coupled with the nature of the work that Mr. Weigel has performed since that accident and the lack of medical evidence to support his contentions, the Appeals Board finds that Mr. Weigel has failed to prove that it is more probably true than not that his present back complaints are directly related to the 1993 injury or the natural progression of that injury. Therefore, based upon the record compiled to date, the request for medical treatment must be denied.

**WHEREFORE**, the Appeals Board affirms the February 16, 1999 order entered by Judge Benedict.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1999.

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BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS  
Anton C. Andersen, Kansas City, KS  
Anthony D. Clum, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director

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<sup>5</sup> See K.S.A. 44-551(b)(2)(C) and K.S.A. 44-556.

<sup>6</sup> See Lane v. Snelling, Appeals Board Docket No. 217,369 (Dec. 98).

<sup>7</sup> See K.S.A. 1998 Supp. 44-534a.